



## THE CITY OF LYNCHBURG, VIRGINIA

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OFFICE OF THE  
CITY MANAGER

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**Submitted Online ([www.regulations.gov](http://www.regulations.gov))**

Water Docket  
Environmental Protection Agency  
Mailcode: 28221T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

**Submitted by Email ([vabaytmdl@dcr.virginia.gov](mailto:vabaytmdl@dcr.virginia.gov))**

Department of Conservation and Recreation  
Commonwealth of Virginia  
203 Governor Street  
Richmond, VA 23219

**Re: EPA Water Docket ID No. EPA-R03-OW-2010-0736, Draft Total Maximum Daily Load ("TMDL") for the Chesapeake Bay; and Virginia Chesapeake Bay Watershed Implementation Plan ("WIP")**

To Whom It May Concern:

Thank you for the opportunity to comment on EPA's Draft TMDL for the Chesapeake Bay and Virginia's WIP.

We own and operate the Lynchburg Regional Wastewater Treatment Plant ("WWTP") that serves the City of Lynchburg, and portions of Amherst, Bedford, and Campbell Counties. Our WWTP cleans and discharges highly-treated wastewater within the Chesapeake Bay watershed pursuant to a state-issued National Pollutant Discharge Elimination System ("NPDES") permit.

We have significant concerns with EPA's Draft TMDL and object to EPA's proposed "backstop" actions against the Commonwealth of Virginia and our facility. EPA proposes to cut our facility's stringent nutrient wasteload allocations ("WLAs") currently set forth in Virginia's EPA-approved Water Quality Management Planning Regulation, 9VAC25-720, and Chesapeake Bay Watershed General Permit Regulation, 9VAC25-820 (collectively, the "Virginia Regulations").

EPA is considering these potential cuts under a new EPA guidance letter on "reasonable assurance" and EPA's initial view that Virginia has given inadequate assurance that nonpoint sources (e.g., agricultural sources) will reduce their nutrient loads according to plan. We disagree with EPA's initial view given Virginia's good track record of achieving nonpoint reductions. We also question whether EPA's unpromulgated reasonable assurance guidance is even legal given that operates as if EPA's previously proposed but withdrawn reasonable assurance regulation had actually been put into effect.

We strongly oppose EPA's inequitable proposal to transfer more burden to our WWTP and similar point sources. We object to EPA's currently proposed "backstops" (4 mg/L TN and 0.3 mg/L TP at design flow) in lieu of the WLAs in the Virginia Regulations, and we also object to the threatened but not applied "full backstops" that would decrease the concentration basis further (3 mg/L TN and 0.1 mg/L TP at design flow) and even the flow basis to past flow levels (2007 to 2009 average flow rather than design flow). In order to meet these allocations, the City of Lynchburg would



need to invest in an upgrade of our WWTP estimated at \$70 million. Lynchburg already has among the highest sewer rates in the state in relation to the median household income as a result of our ongoing CSO program which has been extremely successful in improving water quality in the James River by significantly reducing the volume of raw sewage being discharged into the river and its tributaries. However, we estimate that in order to complete the CSO program, an investment of over \$300 million still remains. As a result, the addition of another major capital expense at this time is simply unaffordable and would slow the progress of the CSO program to the detriment of water quality.

In addition, as the Chesapeake Bay Program has long ago determined, the James River does not influence mid-Bay water quality and any regulation of James River nutrient discharges should occur only for local water quality protection. Locally, the applicable water quality standard is the chlorophyll standard adopted by Virginia in 2005 and approved by EPA. Since adoption of this standard, the State issued the Virginia Regulations governing WWTPs and local governments have designed and constructed the required new facilities with long-term debt, which now must be repaid by the public over the next 20 to 30 years.

At this extremely late point in time, EPA has unilaterally changed the computer model it uses to judge the adequacy of Virginia's actions. Virginia, however, has determined in its WIP (September 2010) at pages 14-15 that the chlorophyll standard is faulty and that "additional scientific study is needed to provide a more precise and scientifically defensible basis for setting final nutrient allocations." We agree with this finding and determination by Virginia, and we also support Virginia's "Four Part James River Strategy" at pages 15-17 of the WIP to address these major technical problems. We strongly support the WIP with regard to its wastewater elements at pages 11-12 (Source Sector Strategy for Wastewater), at pages 14-17 (James River), and pages 38-50 (Section 5: Wastewater).

We understand that the Draft TMDL is fundamentally and materially flawed as a technical matter, especially with regards to the James River components. Serious chlorophyll standard and computer modeling deficiencies are thoroughly documented in the comments of the Virginia Association of Municipal Wastewater Agencies, Inc. ("VAMWA"). We request that EPA fully consider and address all of VAMWA's comments, which we generally support and hereby incorporate by reference as if fully set forth herein.

In closing, what is distinctly missing from EPA's Draft TMDL is any appreciation for the major commitments very recently made by EPA and Virginia (the State's adoption and EPA's approval of the Virginia Regulations in 2005 and 2007) and the major financial commitments that local governments have made to implement those requirements including incurring significant public debt (typically with 20 to 30 year repayment terms) and constructing major new facilities (typically built to last 20 to 30 years). We object to the waste inherent in EPA's proposed override of the Virginia Regulations and Virginia WIP through the Draft TMDL and its elements that relate to our WLAs.

For further information, please contact Timothy Mitchell, City of Lynchburg Utilities Director, at (434)455-4252 or you may email him at [timothy.mitchell@lynchburgva.gov](mailto:timothy.mitchell@lynchburgva.gov).

Sincerely,



L. Kimball Payne, III  
City Manager

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